1988

The State of Utah v. Ronald Watson Lafferty : Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, Plaintiff-Respondent, vs. RONALD WATSON LAFFERTY, Defendant-Appellant.	PETITION FOR REHEARING Case No. 20,740 Category No. 1

Petition for Reconsideration of a decision by the Utah Supreme Court, Opinion Number 20740, filed January 11, 1988, in an appeal from two convictions of First Degree Murder, capital felonies, two convictions of Aggravated Burglary, first degree felonies, and two convictions of Conspiracy to Commit Murder, first degree felonies, in the Fourth Judicial District Court for Utah County, the Honorable J. Robert Bullock, Judge, presiding.

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STATEMENT OF THE CASE

This is a Petition for Rehearing of a decision filed by the Supreme Court filed on January 11, 1988. Originally, this case was an appeal from convictions and judgments imposed for two counts of First Degree Murder, capital felonies; two counts of aggravated burglary, first degree felonies; and two counts of Conspiracy to Commit Murder, first degree felonies in the Fourth Judicial District Court in and for Utah County, the Honorable J. Robert Bullock, Judge, presiding.

STATEMENT OF FACTS

The opinion of the court sets forth many of the relevant facts of the case, however, there are several additional facts which the opinion does not set forth which appellant deems relevant to the discussion and consideration of the issues. The trial court held two hearings at which the four alienists either testified in person or submitted written reports and test results. The January 28, 1985 hearing transcript contains 83 pages of testimony from the four doctors who had examined the defendant and had observed him during his stay at the Utah State

Hospital including testimony from Mr. Richard Johnson, defendant's attorney. The testimony of the alienists goes into extensive detail in explaining the relationship of the diagnosis of defendant and the effect upon his competency.

The January 28, 1985 transcript also contains the testimony of Mr. Johnson who related the difficulty he had encountered in attempting to discuss the matter with the defendant. (1/28/85 transcript p. 81-83.

The transcript of the April 2, 1985 hearing contains 56 pages of testimony from three of the four doctors who submitted the report of March 19, 1985, concerning the competency of the defendant. In that testimony, the doctors explained in detail the reasons they felt the defendant's mental illness combined with his mental defect to prevent him from rationally understanding the criminal process. At each of the hearings, the doctors explained in detail how the condition of the defendant had changed from the November evaluation and attributed that change to the anoxic brain damage suffered during the December suicide attempt of the defendant.

INTRODUCTION

This Petition for rehearing is filed pursuant to Rule 35, Utah Rules of the Supreme Court. In Brown v. Pickard, denying reh'g 11 P. 512 (Utah 1886), the Utah Supreme Court established the standard for granting a Petition for rehearing, stating:

> To justify a rehearing, a strong case must be made. We must be convinced that the court failed to consider

> some material point in the case, or that it erred in its conclusions. . . 11 P. at 512.

Later, in Cummings v. Nielson, 129 P. 619 (1913) this Court added:

> To make an application for a rehearing is a matter of right, and we have no desire to discourage the practice of filing petitions for rehearings in proper cases. When this court, however, has considered and decided all of the material questions involved in a case, a rehearing should not be applied for, unless we have misconstrued or overlooked some statute or decision which may affect the result, or that we have based the decision on some wrong principle of law, or have either misapplied or overlooked something which materially affects the result . . . If there are some reasons, however, such as we have indicated above, or other good reasons, a petition for rehearing should be promptly filed and, if it is meritorious, its form will in no case be scrutinized by this court. Cummings v. Nielson, supra at 624.

The argument section of this brief will establish that, applying these standards, this petition for rehearing is properly before the Court and should be granted.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN FINDING DEFENDANT COMPETENT TO STAND TRIAL

The appellant urges the court to consider the evidence of his competency in light of the standard set forth in Dusky v. U.S., 362 US 402 (1960). This court found in its opinion, that there was a lack of explanation by the experts who testified that the defendant was not competent to stand trial as to how the "labels" of diagnosis related to his competency. The court also stated that "It is unclear what had changed since November,

other than the labels used to describe Lafferty's condition." Additionally, in footnote 3 to the decision, the court stated ".. neither the examiner's reports nor their testimony indicate the suicide attempt and its consequences were the basis for their changed opinions." Defendant submits that reference to the transcripts of the two hearings contain substantial explanation by each of the examiners as to the effect of the suicide attempt and its consequences upon the condition of the defendant, including responses to questions by the court as well as from counsel for the state and defendant. In each of the hearings, each of the examiners explained how the loss of oxygen to defendant's brain during the suicide attempt caused a loss of both memory and I.Q. The I.Q. loss was at least 22 points and may have been as great as 37 points. (See addendum A page 48). The examiners explained in detail how the defendant's memory loss contributed to his incompetency. (See addendum A pages 1 to 58).

The statutes of this state which are involved in the determination of competency, Utah Code Ann. 77-15-1 et. seq. and in particular, 77-15-5 which governs the hearing, require that the examiners place labels upon the condition of the defendant. In 77-15-5 refers to title 64 which is the mental health section of the code. 64-7-28(1) provides the definition of mental illness as follows:

> Mental illness means a psychiatric disorder as defined by the current Diagnostic and Statistical Manual of Mental Disorders which substantially impairs a person's mental, emotional, behavioral, or related functioning.

The statute requires that the examiners diagnose some

identifiable mental illness or defect. The examiners found defendant to suffer from an organic amnestic syndrome and a paranoid disorder. (See Addendum A page 17, 39, 42-43, and 55). The specific mental illness or defects diagnosed by the examiners are set forth in the Diagnostic and Statistical Manual of Mental Disorders. (See Addendum B, pages 112-113, and 195-198).

The Dusky case requires the defendant have, in addition to orientation to time and place and some recollection of events, that he "has the present ability to consult with his lawyer with a reasonable degree of rational under standing--and whether he has a rational as well as a factual understanding of the proceedings against him." 363 US 402-403. The trial court's findings and this court's decision assume that the defendant had the present ability since he could choose to exercise that ability. Defendant submits that as a result of his mental illness and defect, he did not have the ability to so choose. Defendant's ability to choose as set forth by the examiners was limited by the mental illness and was demonstrated by his behavior at the April 2, 1985 hearing when questioned by Mr. Watson, the prosecutor. The defendant continuously took the Fifth Amendment as a basis for refusing to answer questions put to him by the prosecutor even though the court explained he had no basis to do so. A comparison of the defendant's conduct in the original competency hearing in October, 1984, his conduct at the preliminary hearing, and at the arraignment hearing with the conduct subsequent to his suicide attempt in December, 1984

clearly shows a marked difference in the defendant's level of participation and understanding of the questions of the court and counsel. The nonorganic mental illnesses by definition include situations such as the defendants, where the patient is physically fit and if able to choose to forgo irrational behavior, the patient would not be mentally ill.

This court also ruled that the examiners "diagnoses were based upon the premise that Lafferty's religious beliefs and experiences did not accord with reality, an insupportable premise upon which the trial judge could not rely..."(Decision page 5). Defendant submits that the examiners must of necessity determine whether or not the experiences described by the defendant i.e., the commingling of his spirit with others at the State Hospital, or his belief that the only way of determining the authenticity of things to be through spiritual manifestations, are simply a system of religious beliefs or whether they are evidence of a delusional system. The court cites the case of United States v. Ballard, 322 U.S. 78 and the case of United States v. Lee, 455 U.S. 252, as prohibiting evaluation of religious beliefs. Defendant submits that neither of the cited cases prevent the psychiatric and psychological experts from considering whether the beliefs are delusional or simply beliefs of the defendant. As Dr. Van Austin testified in the April 2, 1985 hearing, he did not feel that the defendant was incompetent in November, 1984, even though he found the defendant to have a very strong system of religious beliefs. Of course, at that time the doctor was

aware of the defendant's claim to have received the revelation containing the "hit list". He stated that "as a result of the anoxic brain damage, that system of very fervent religious beliefs has deteriorated into a system of religious delusions". (Addendum A page 49). To deny the defendant who happens to have a mental illness which involves some religious fixation or delusion the opportunity to have his mental condition considered because it happens to involve religious matters denies that category of mentally ill persons equal protection of the law. Under the court's reasoning, they would never be deemed to be incompetent unless there was some additional condition or behavior which could be then adequately considered.

In this case, defendant submits that the quality as well as the quantity of information available to the four examiners who gave the opinion that defendant was not competent far outweighed the information and testimony provided by Dr. Thorne. That gap between the two opinions constitutes, at the very least, a clearly erroneous decision by the trial court.

POINT II

THE COURT ERRED IN NOT ALLOWING DEFENDANT TO DEFEND HIMSELF

This court found that after defendant recovered his competence, he had failed to exercise his right to waive counsel when questioned by the trial court. As supported by the record, throughout the prior proceedings the various judges who presided at the preliminary hearing, at the arraignment proceeding, and the trial judge himself had in detail questioned defendant about

his waiver of his right to counsel and had in fact, made findings of the "knowing and intentional" waiver of that right. If, as the court has found, the defendant was as competent at the time of trial in April, 1985, as he was in the fall of 1984 during the time when he was acting as his own counsel, then there had been a competent waiver of that right. Additionally, the court was informed by his counsel, Mr. Johnson, as to the defendant's desire in that matter. Defendant submits that under the case of State v. Penderville, 272 P2d 195, and the case of Faretta v. California, 422 U.S. 806, defendant should have been allowed to represent himself. The defendant urges the court to reconsider its ruling on this point. As set forth earlier, the reason defendant wished to represent himself was twofold. First, he did not trust the system and did not wish to relinquish control of his defense to Mr. Johnson, a person the examiners testified the defendant felt to be part of the system persecuting him. (Addendum A page 11). Secondly, he believed that if he conducted the defense, his spirit could mingle with the spirits of the judge, prosecutor and jury and the truth would therefore be discerned. (Addendum A, page 46). If the defendant is not incompetent as a result of the above beliefs, then he should be allowed to present his case to the jury in the fashion and manner which he believed to be in order. By forcing counsel upon him, the court created a situation where the defendant and counsel were at odds as to the defense of the case and which was demonstrated in the presence of the jury creating the situation

which occurred in McKaskle v. Wiggins, 104 S. Ct. 946, previously cited to the court in which his appointed counsel was not able to effectively present the defense and the defendant was not able to defend himself.

POINT III

THE COURT MISAPPLIED A PRINCIPAL OF LAW IN DETERMINING THAT THE PROSECUTORS CLOSING ARGUMENT DURING THE PENALTY PHASE WAS HARMLESS ERROR.

At the conclusion of the penalty phase of the trial of the defendant, the prosecutor, in closing argument, stated:

> He will kill again. He will murder. He will take another human life. The only thing, ladies and gentlemen, and believe me I know exactly what I am saying to you, because I am going to shift my burden in a moment, but, the only thing between ... him and his next victim is you. The only thing that is going to save the life of the next victim is you. I can't do it anymore.

As stated by Associate Chief Justice, Daniel I. Stewart, this argument of the prosecutor was improper because it was "plainly wrong." Justice Stewart further set forth the reason that the prosecutor's statement was wrong:

> In a capital case, the only alternative to a death sentence is a life sentence. Whether an inmate may ever be paroled from such a sentence depends upon the decision of the Utah Board of Pardons, and its decision would necessarily be based in part upon the assessment of the likelihood that an inmate will not be likely to commit an act of violence if paroled. The prosecutor simply put the matter to the jury as a false alternative: either return a verdict of death or the defendant will kill again.

The United States Supreme Court in Gardner v. Flordia, 430 U. S. 349 (1977) declared, "It is of vital importance to the defendant and the community that any decision to impose the death

sentence be, and appear to be, based upon reason rather than caprice or emotion." This Court in the case of State v. Brown, 607 P.2d 261 (1980) stated that the prosecutor must use "scrupulous care" in a capital homicide case. In the Brown case, this Court found that the prosecutor had committed prejudicial error in the penalty phase of the trial of the defendant in that case because of ignoring a court's admonition not to use hearsay on hearsay evidence. The complaint of hearsay on hearsay evidence was the testimony of Wayne Watson, a deputy Utah County attorney, who stated under oath as a witness, that a Mr. Bingham had testified in a prior trial against the same defendant, Brown, that "I just head shot to F------ for messing with my brother." The record of the proceedings of the trial wherein Mr. Bingham was a witness against the defendant revealed that the actual testimony given by Mr. Bingham regarding his memory of a statement made by the defendant, Brown in the prior case, was, "I shot them both in the head, " or "I head shot both of them," or something to that effect. In the Brown case, this Court found the error of the prosecution to be prejudicial because the hearsay on hearsay lacked probative value and was introduced contrary to a court's admonition. When one examines the difference between the statements constituting the hearsay on hearsay, there is very little difference. Mr. Bingham's actual testimony and Mr. Watson's recollection of it both indicate that Mr. Brown stated that he had head shot or shot "both of them." The only real difference is Mr. Watson's addition of the words

"for messing with my brother."

If this Court can determine that the error committed by the prosecution in the Brown case was prejudicial error requiring a remand for imposition of a life sentence, then certainly the improper and false statement of Mr. Watson with respect to Mr. Lafferty's ability to kill again falls well within the reason for the ruling of prejudicial error in State v. Brown. Applying those principals in State v. Brown should compel this Court to find prejudicial error in the present case regarding the prosecutor's false statement quoted herein above.

POINT IV

THE ALLOWANCE OF EVIDENCE OF VIOLENT CRIMES WHICH HAD NOT RESULTED IN CONVICTIONS DURING THE PENALTY PHASE OF THE DEFENDANT'S TRIAL CONSTITUTED UNFAIR PREJUDICE.

The Court in this case held "that the sentencing body -- be it judge or jury -- may not rely on other violent criminal activity as an aggravating factor supporting a death penalty unless it is first convinced beyond a reasonable doubt that the accused did commit the other crime." To implement the rule, the Court went on to add two requirements to the penalty phase of capital trials. Then this Court held that the defendant's commission of violent acts while he was incarcerated at the Utah County Jail was proven beyond a reasonable doubt based upon "undisputed eyewitness testimony." Defendant argues that the principal of law which the Court ignores in this type of reasoning is that the defendant was not accorded the protection

which he has a right to rely upon as an accused. That is, when a person is accused of a crime, he then is shrouded with a presumption of innocence and a burden is placed upon the State to prove each and every element of the charge against the accused beyond a reasonable doubt to the satisfaction of the trier of fact. He has the right to confront witnesses and to call witnesses on his own behalf and to assert any defenses which may be available to him under the law. In a proceeding such as occurred in the penalty phase of the trial of this case, the defendant was never accused until the prosecution introduced evidence of his violent acts at the jail during the penalty phase. Even at that time he was not formally accused, given the opportunity for arraignment and preliminary hearing. He was denied his right of confrontation and certainly cannot be said to have been shrouded with the presumption of innocence. The State was not required to put on evidence to prove beyond a reasonable doubt each and every element of the "non-charged" crime. For this reason, the language in the case of State v. McCormick 272 Ind. 272, 397 N.E. 2d 276 (1979) as decided by Justice Stewart in this Court's opinion is better reasoned and should be strictly followed. The Court in McCormick stated:

> The procedure to be utilized in this case as provided for by statute and case law will be, in fact, two trials. The defendant will first be tried to a jury for the killing of Douglass Overby. If he is convicted, a sentencing hearing will take place. At this sentencing hearing, the defendant will, in essence, be tried for the murder of Harold Lewis. This hearing will be before the same jury which will have just recently convicted the defendant of another, unrelated murder. The trial court noted that if

> McCormick were tried in an actual criminal trial for the murder of Harold Lewis, any evidence relating to the Overby killing would be inadmissable in the State's case in chief. Likewise, no evidence of the Lewis killing may be admitted in this case in the trial of Count I, the Overby killing. Thus, the effect of the statutory procedure in the present case is obvious: defendant McCormick would be fully tried on two separate, unrelated charges before the same jury. He would be tried on the second count to the jury which has been undeniably prejudiced by having convicted him of an unrelated murder. State v. McCormick, 272 Ind. 272, 397 N.E. 2d 276 (1979).

The reasoning of the McCormick case applies with equal force to the sentencing procedure in this case. Defendant contends that this Court misapplied a principal of law and should have found that the prosecution's use of uncharged, unconvicted criminal activity was unfairly prejudicial and when coupled with the prosecutor's misstatement discussed in the next previous point, unduly prejudiced the jury and likely resulted in their verdict of death rather than life.

POINT V

THE CUMULATIVE EFFECT OF PREJUDICIAL PHOTOGRAPHS AND THE USE OF VIDEO TAPE AT THE PENALTY PHASE OF THE TRIAL UNDULY PREJUDICED THE JURY.

This Court concluded that during the guilt phase of the trial of Ron Lafferty the "trial court abused its discretion in admitting the photograph into evidence." The Court set forth the reasons for the holding among which were that the pictures were "quite gruesome;" that they were not "merely crime-scene photographs, that pictures of bodies, conveying little information beyond the fact that the victims died violent and

bloody deaths;" that the body of the child had been "repositioned in the crib so that the gaping neck wound and blood-covered face and body could be seen;" that the "emotional impact of these photographs was strong, and they had no unusual probative value." The Court then concluded that even though the admission of the photographs was erroneous, their use in the trial was harmless because the "other evidence against Lafferty was so overwhelming that there is little or no likelihood that the outcome of either the guilt or the penalty phase of the trial was affected by the admission of the photographs.

In capital cases, it is of vital importance to the defendant that any decision to impose the death sentence be based on reason rather than caprice or emotion. This Court has emphasized that the prosecutor must use scrupulous care in a capital homicide case. If the State were permitted during the penalty phase to use as evidence in aggravation, material that would be insufficiently probative to support a conviction in the guilt phase, then there is a chance that this material might be used by the sentencing body as the basis for imposing death. Gardner v. Flordia, 430 U.S. 349 (1977); State v. Brown, 607 P.2d 261 (1980); State v. Wood, 648 P.2d 71 (1981). It is defendant's contention that taken alone, each one of the complained of errors committed by the prosecution, i.e. inflammatory photographs, false statements of the prosecutor, or evidence of crimes without conviction, might not persuade the jury to impose the death sentence. However, when all three of these unduly prejudiced

acts of the prosecutor are combined in the death penalty phase of the trial proceedings, the cumulative effect of them must certainly have a much greater impact upon the minds of the jury when coupled with the permissable evidence produced in the guilt phase of the trial such that the jury rendered a verdict of death rather than a verdict of life. To allow the cumulative affect of these three unduly prejudicial acts of the prosecution to stand during the penalty phase of the trial ignores the principals of law announced in the Gardner, Brown and Wood cases as set forth herein above. Defendant contends that absent the unduly prejudicial acts or erroneous evidence which were allowed in the penalty phase of the trial, the jury would not have reached the verdict of death.

CONCLUSION

In light of the foregoing, Appellant respectfully petitions this Court to reconsider its decision in this case and remand the matter for proceedings to determine the present competency of the defendant or, in the alternative order a new trial wherein defendant is allowed to represent himself. Further, that the Court remand the matter to the District Court for a new penalty hearing.

RESPECTFULLY submitted this 10th day of February, 1988.

MICHAEL D. ESPLIN

GARY H. WEIGHT

CERTIFICATE OF SERVICE

I hereby certify that I mailed four true and correct copies of the foregoing Petition for Rehearing to the office of David L. Wilkinson, Utah Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, postage prepaid this 10th day of February, 1988.

Gary H. Weight

ADDENDUM A

ORIGINAL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR UTAH COUNTY, STATE OF UTAH

THE STATE OF UTAH, Plaintiff, vs. RONALD WATSON LAFFERTY, Defendant.	Criminal No. 9303 ABSTRACTS FROM TRANSCRIPT OF HEARING: comprising the Testimony of the Witnesses: DR. ROBERT J. HOWELL; DR. VAN AUSTIN; DR. C. JESS GROESBECK; and DR. D. EUGENE THORNE.

BE IT REMEMBERED, that the above-entitled matter came on regularly for hearing before the Honorable J. Robert Bullock, Judge of the above-entitled court, on the 2nd day of April, 1985, commencing at the hour of 1:05 o'clock p.m., at Room 310, County Building, Provo, Utah;

That there appeared as counsel representing plaintiff, State of Utah, WAYNE B. WATSON, ESQ., Deputy Utah County Attorney, MS. BEVERLY RAMSEY, Deputy Utah County Attorney, and NOALL T. WOOTTON, ESQ., Utah County Attorney; and as counsel representing defendant, RICHARD B. JOHNSON, ESQ.

WHEREFORE, the following proceedings were had, as abstracted from the reporter's notes and comprising the testimony of the witnesses, DR. ROBERT J. HOWELL; DR. VAN AUSTIN; DR. C. JESS GROESBECK; and DR. D. EUGENE THORNE.

FILED
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Clerk, Supreme Court, Utah

Q Fine. But at least with regard to this paranoia he believes that he's a subject of a persecution or, I interchange the word, "prosecution"?
A Yes. And, I'm not sure you should, but you did.
Q And he knows where he is today, doesn't he? He knows he's in Judge Bullock's courtroom?
A I believe that.
Q And he knows that I'm the prosecutor, representing the State of Utah?
A I haven't asked him, but I would assume so.
Q And he understands that there's a jury trial system in this country and a jury would be imposed in this particular instance, does he not?
A I'm not sure of that point. I'm not positive.
Q He knows who Mr. Johnson is?
A Very well.
Q And he knows that Mr. Johnson has been provided, does he not, as far as you know, to help him if he so desires?
A I believe he knows that. He also believes that you and Mr. Johnson are in league with each other.
Q In the same camp?
A That's right.
Q Would you be surprised if he told me just a half-hour or so ago that he perhaps didn't believe that?
A Yes, I wouldn't be surprised at all. He's putten

me in the same camp, and taken me out and put me back in, and that wouldn't surprise me in the least.

Q Now, your letter talks about a memory recall problem but he has been unwilling to honestly discuss this with you. Is that not true?

A To me he has said that he has not fibbed to me at all. And to me he has been very consistent, that there are very few things that he remembers. To other people he will insist that he does remember those things. He has recognition once he hears these things. He has less ability to recall these from within.

Q Do you believe he has the condition of amnesia, in any respect?

A At least amnesia.

Q With regard to the events of July 24, 1984, do you believe that?

A I think that it is very fuzzy for him, yes.

Q Now, if someone reconstructed that memory for him and provided him all the circumstances, dates, places, times and who was present during the commission of these crimes, and so forth, he could have that memory reconstructed for him. Couldn't he?

A I'm not sure I would agree with that. There's a possibility. I'm not sure how long it would last.

Q All right. If he told me on January 28th, the last

Manual of -- let see -- in the current Manual of Mental Disorders, which substantially impairs a person's emotional -- mental, emotional behavior or related functioning." That's the legal definition. That's the only legal definition of mental illness I know of in the State.

Now, what we were saying there is that he does suffer from a mental illness; in fact, two: an organic amnestic syndrome and a paranoid disorder. And then we went on to list the criteria that would allow us to, hopefully, the Judge would order involuntary treatment for it.

Q All right. So he has two mental illnesses, and one is an am --

A Amnestic.

Q -- amnestic condition?

A That's correct. And maybe more than that, but it's at least that.

Q The other one is the one we are talking about, the paranoid delusional system?

A That is my belief.

MR. WATSON: That's all the questions I have, your Honor.

THE COURT: Now, do you have questions, Mr. Johnson?

MR. JOHNSON: Yes, your Honor, I do.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. JOHNSON:

Q Dr. Howell, I just want to ask you some questions so that the record is clear as to exactly what you have indicated. In the letter of March 19th, which you joined in, you talk about a return to a pervasive religious attitude. Would you describe and define that for us, please?

A Are you using my letter or the --

Q I'm using the Hospital's letter.

A Joint-letter. Okay. As he, as time has gone on, and as you don't see the organic symptoms quite as much as you did, he has become more religiously oriented. In my judgment the religion has taken on a delusional nature. He talks about the comingling of his spirt with other spirits on the ward. He is become, has become more adamant about the only true way of determining the authenticity of things is through spiritual manifestations. And in general he has become turned more to a religious orientation. But he doesn't have the skills that he had before the hanging incident.

Q Now, does the religiosity that is pointed to in the letter of March 19th form in your opinion the base of the delusional system?

A Well, I think the religiosity is the way the delusional system is being expressed.

Q Okay. Now, does Ron have an attitude, in essence,

appreciate his predicament and participate, does the person have to have some realistic sense of charges, of how it's going to impact him?

A I believe that. That's why I quoted the Dusky Standard in my report.

Q Now, Whereas Ron can see and hear what's going on around him, when you consider, with his paranoia that you have found and the delusional systems that you have talked about, can he rationally, in your opinion, understand the trial, the procedures dealing with lawyers, judges and prosecutors?

A I have an opinion on that.

Q And, what's that opinion?

A It is that he cannot.

Q Now, I notice from the records of the Hospital that aside from the matters which are indicated in the report, that there has been noted something that is referred to as a "focal seizure."

A That's correct. Happened on March 21.

Q Would you tell the Court what a focal seizure is?

A Yes. "Focal" means localized. Focal infection is a localized infection. So, a focal seizure means that it was circumscribed or localized to one area.

Do you want me to give a little history on my concern about this?

people perceive him that way, too.
Q Now, just as a gauge: we're not talking with Mr. Lafferty about some small difference with the rest of us of how we perceive this case and his part in it, are we?
A Not in my judgment.
Q Are we talking about a very substantial significant departure from this consentual --
A Validation.
Q -- validation that you talked about?
A I think so.
Q Okay. Now, in your mind does the way Ron perceives this proceeding and his role in it and the consequences even closely approach what most people would perceive?
A No, it does not. He said he was going to use a defense of silence.
Q Okay. Now, that perception, based upon paranoia and the delusional system and the organic problem you've talked about, --
A Yes.
Q -- is not a result or -- Let me rephrase the question. His rationality is not simply based upon the way he has chosen to live his life, but you believe is a result of a mental illness and organic problems. Correct?
A That was, likely, involuntarily came upon him.
Q Okay. And it is not a choice of life, it is a result

Q Now, whether or not he agrees with that concept or whether he should be subjected to that concept, at least he understands that's the game we are trying to play here.
A That's correct.
Q And, he knows who Mr. Johnson is.
A He knows who Mr. Johnson is, that's correct.
Q And, he knows that Mr. Johnson is a defense lawyer and may be provided to help him if he wants that help.
A In those specific words, that is correct.
Q And, he knows, does he not, that the possible punishment for the two murders charged at least is capital, or death?
A He knows that.
Q And, he knows that the State is trying to pursue conviction for all of the crimes that we have charged him with, doesn't he?
A He knows that.
Q Now, are you of the opinion -- well, I guess you are because you signed the letter, that he suffers from a paranoid delusional system?
A That's correct.
Q And, he thinks that the State is part of that system that's persecuting him, doesn't he?
A The State and others, correct.
Q Perhaps, even yourself and the Hospital staff

quences are. But then I feel that he further needs to have a rational understanding of that.

Q And that, as I understand it, is where you say things break down. He understands physically where ie is in time, but how he interprets it because of the religious delusional system and the paranoia, that's the off-track thought patterns that you described in your definition of rationality. Correct?

A In this particular case, yes, sir.

Q Okay. Now, I don't want to have to go over the whole report, but I need to ask you a couple of questions. You are not basing your report and your opinion solely on any particular aspect.for instance, you don't think that the fact that his IQ dropped 22 point is alone sufficient to find him incompetent to proceed?

A No, I do not.

Q You do not think the amnesia standing by itself is sufficient to indicate that Mr. Lafferty ought not to proceed to trial?

A No. Amnesia per se does not preclude competence.

Q All right. It is a combination of all of these elements together upon which you base your opinion. Is that correct?

A More than that, Mr. Johnson. It's the change. As you are aware, we have been familiar with him over a period

of months now. And, I certainly in November strongly felt that although he had a strong system of religious beliefs hich were quite different than many other peoples' systems of religious beliefs, that this did not represent a delusional system. And, at this point in time I still believe that that did not represent a delusional system at that point in time. However, I believe that since the anoxious insult of the hanging, this paranoid delusional system has developed. And, I feel that this does interfere with his ability to meaningfully function, either independently in a courtroom or with the aid of counsel in a courtroom. And, although I believe that he knows the consequences of what may happen in the courtroom, he certainly does not at all understand the significance of those consequences.

Q And then as you indicated, his memory and the way he interacts with people, that comes and goes; he has different problems with memory, he might recall something that happens today or he might not, if you asked him a week from now. Correct? Or, even tomorrow.

A Yes.

Q Now, just so I understand it, from reading the report, that is the March 19th letter to Judge Bullock, I take it that because of all of the things you outlined: you talk about the religious delusional system, you talk about the blurred ego boundaries, you talk about the unable to

aware, equal -- or, a lot of precedents where people were allowed to do that; they are allowed to defend themselves no matter how badly they shouldn't do it.

Q But, wouldn't you say that was not rational?

A I would say that --

Q In fact it was irrational?

A I would say that may represent very poor judgment. If the person had a good reason for making that decision, and I have seen people that, you know, although I've said to myself: god, this is a stupid decision they made based on their religious beliefs or beliefs in constitutional law, or whatever, say: well, okay, he's got a right to do that. It's a bad decision, but he has a right to do that; if that decision is, to me is a logical decision. But, if that decision were to be based on the belief that by defending himself his spirit will communicate with your spirit and the jury's spirit and His Honors spirit and it will all be worked out by God; there we fall down. That's beyond what I'm willing to believe is rational.

Q All right. Can't that same person say: well, I'm going to put myself in the hands of competent, experienced defense counsel and sit back and let defense counsel run the show; if he wanted to?

A If that person were to do that and be able to make consistent, logical -- or, give consistent, logical input to

vations.

Q Okay. Now, one last point where it's almost like the skulp-monkey trial, here, we're talking about this "rationality;" that, even today Mr. Watson talked about the world being flat and the world being round; but, in science today we have people who thing entirely different things about quantum physics or about blackholes or about new scientific things. Correct?

A That's correct.

Q But, they have a means by which they get to their end objective that is accessible. Other people might reject their theories just like in the old days they rejected theories about astronomy, astrology and everything else. Correct?

A That's correct.

Q But it does, the key to all of that is is that you are dealing with some kind of logic and rationality, although you might be on the wrong premise that other people can at least see. Correct?

A I believe that is correct.

Q Now, with Mr. Lafferty, does he have that kind of understandable consistent point to get to the end that he gets to?

A I do not believe that he does.

Q Do you think Mr. Lafferty is just simply a religious

fanatic?

A Well, I don't want to use those words.

Q Well, I'm saying that his, his religious delusional system you talk about is not just simply a choice of beliefs, it is influenced by a mental illness; is it not?

A As I testified a few minutes ago: I think he has a system of, a very strong system of religious beliefs which have existed for a number of years, and they existed when we previously evaluated him. And, I went on to testify that I believe at this point, probably as a result of the anoxic brain damage, that system of very fervent religious beliefs has deteriorated into a system of religious delusions.

MR. JOHNSON: All right. That's all.

MR. WATSON: I have no further question.

THE COURT: Is there any reason to suspect that the situation will be different in a month, six months, a year or something of that nature? If it's deteriorated to this point and from the time of the attempted suicide, what is there to indicate that there would be any change in the future?

THE WITNESS: Your Honor, his condition certainly has improved from December 29th. At first, very slowly; once at the State Hospital, it was improved, you know, more.

THE COURT: What condition?

Court?

A Yes, I believe that.

Q And, he recognizes, does he not, that if he so desires, he could confer with Mr. Johnson and they could work together in an attorney-client relationship?

A Yes. I think factually and consciously he is aware of those possibilities, yes.

Q And you agree, apparently, that he has or he suffers from a mental illness?

A Yes, I do.

Q And, what is that?

A I believe he suffers from an organic amnestic syndrome and an atypical paranoid reaction.

Q Do you agree with the characterization of that "atypical paranoid reaction" as a paranoid delusional system?

A Yes, I do.

Q And, that's evidenced by his concern or his religiostic belief, is it not?

A That's where it's primarily manifest, yes. But I must add, it's not just because he has a strong fixed belief system. The precise point is, the inability to rationally utilize his thinking within his belief system to confront the facts that are facing him.

Q Now, by that you are saying that he believes he's above the law of the State of Utah, don't you?

discuss in his opinion whether or not certain witnesses are telling the truth, and so forth.

A He would have difficulty with that, but with reconstruction and help from a counsel, if we are just talking about memory and the memory deficit he has, that could be accounted for. I mean, that could be, that could go ahead, right.

Q But, you are saying because of this paranoid delusional system he just may not want to do that, may throw the whole system out the window and say: I'm not subject to the system, I'm not going to cooperate.

A Right. Part of his delusional system is a messianic identification with his role, as he has a pervasive perception that he, for example, is not on trial, the system; and, that's virtually everybody who's involved in it, including the hospital, including the court process, the court individuals involved and everyone that's taking place.

Q Now, I didn't ask you this before, but let me make sure I understand you correctly. You are not of the opinion that he is mentally defective, i.e.: he has a substantial reduction in IQ such as would cause him to be unable to assist counsel. Right?

A Yes. No, it wouldn't be because of that, no.

MR. WATSON: Thank you. That's all

MR. JOHNSON: Nothing further.

ADDENDUM B

copy three-dimensional figures, assemble blocks, or arrange sticks in specific designs)

(4) personality change, i.e., alteration or accentuation of premorbid traits

D. State of consciousness not clouded (i.e., does not meet the criteria for Delirium or Intoxication, although these may be superimposed).

E. Either (1) or (2):

(1) evidence from the history, physical examination, or laboratory tests, of a specific organic factor that is judged to be etiologically related to the disturbance

(2) in the absence of such evidence, an organic factor necessary for the development of the syndrome can be presumed if conditions other than Organic Mental Disorders have been reasonably excluded and if the behavioral change represents cognitive impairment in a variety of areas

Amnestic Syndrome

The essential feature is impairment in short- and long-term memory occurring in a normal state of consciousness (i.e., not clouded). The disturbance is attributed to a specific organic factor. Amnestic Syndrome is not diagnosed if memory impairment exists in the context of clouded consciousness (Delirium) or in association with a more general loss of intellectual abilities (Dementia).

The individual with an Amnestic Syndrome has both an ongoing inability to learn new material (short-term memory deficit; anterograde amnesia) and an inability to recall material that was known in the past (long-term memory deficit; retrograde amnesia). The former is conventionally assessed by requiring the individual to remember several unrelated words or a short paragraph after a brief (usually 5-15-minute) interval of distraction. The latter is tested by asking questions about events of the past such as birthplace, family, schooling, vocation, major historical events, the names of recent presidents, etc. The individual with an Amnestic Syndrome has difficulty with both of these operations of memory. Events of the very remote past, however, are often better recalled than more recent events. For example, an individual may remember in vivid detail a hospital stay that took place a decade before examination, but may have no idea that he or she is currently in the hospital. So-called "immediate memory" (e.g., digit span), however, is *not* impaired in Amnestic Syndrome.

Associated features. A significant degree of amnesia nearly always results in disorientation. Confabulation, the recitation of imaginary events to fill in gaps in memory, is often observed, and when present tends to disappear with time. Most individuals with this syndrome lack insight into their memory deficit, and may explicitly deny it, despite evidence to the contrary. Others acknowledge a problem, but appear unconcerned. Apathy, lack of initiative, and emotional

blandness are common. Although the individual is superficially friendly and agreeable, his or her affect is shallow.

When Amnestic Syndrome is the result of Alcohol Dependence and vitamin deficiency (see Alcohol Amnestic Disorder, p. 136), other neurological complications of alcohol ingestion and malnutrition, such as peripheral neuropathy, cerebellar ataxia, etc., may also be observed.

Course. The mode of onset depends on the etiology. In most cases it is fairly sudden. The subsequent course, also a function of the etiology, is usually one of chronicity.

Impairment. Impairment in social and occupational functioning is usually moderate to severe.

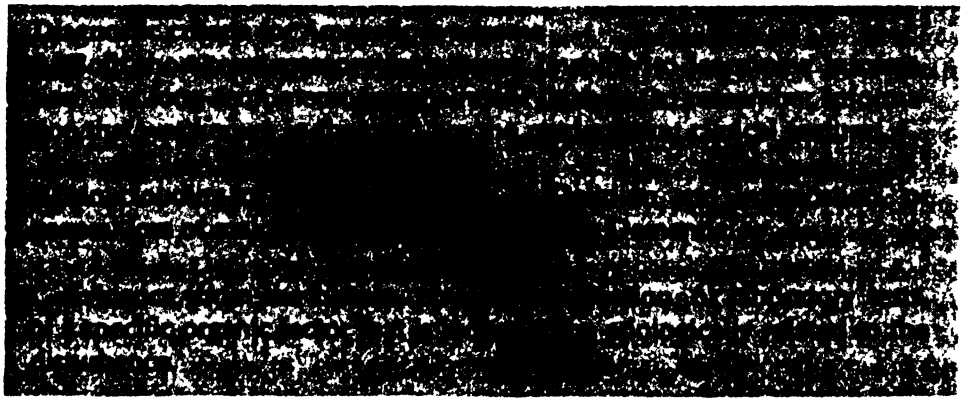
Complications. Any complications are the direct result of the individual's memory impairment. For example, the individual's forgetting to extinguish a lighted cigarette may cause a fire.

Etiological factors. Amnestic Syndrome may result from any pathological process that causes bilateral damage to certain diencephalic and medial temporal structures (e.g., mammillary bodies, fornix, hippocampal complex). Examples include head trauma, surgical intervention, hypoxia, infarction in the territory of the posterior cerebral arteries, and herpes simplex encephalitis. The most common form of Amnestic Syndrome is that associated with thiamine deficiency and chronic use of alcohol.

Prevalence. The syndrome is apparently uncommon.

Differential diagnosis. **Delirium** and **Dementia** also involve memory impairment. In Delirium, however, there is also a clouding of consciousness; and in Dementia, there are other major intellectual deficits as well.

In **Factitious Disorder with Psychological Symptoms**, memory testing often yields inconsistent results. Furthermore, there is no organic etiologic factor.



Paranoid Disorders

The essential features are persistent persecutory delusions or delusional jealousy, not due to any other mental disorder, such as a Schizophrenic, Schizophreniform, Affective, or Organic Mental Disorder. The Paranoid Disorders include Paranoia, Shared Paranoid Disorder, and Acute Paranoid Disorder.

The boundaries of this group of disorders and their differentiation from such other disorders as severe Paranoid Personality Disorder and Schizophrenia, Paranoid Type, are unclear.

The persecutory delusions may be simple or elaborate and usually involve a single theme or series of connected themes, such as being conspired against, cheated, spied upon, followed, poisoned or drugged, maliciously maligned, harassed, or obstructed in the pursuit of long-term goals. Small slights may be exaggerated and become the focus of a delusional system.

There may be only delusional jealousy ("conjugal paranoia"), in which an individual may become convinced without due cause, that his or her mate is unfaithful. Small bits of "evidence," such as disarrayed clothing or spots on the sheets, may be collected and used to justify the delusion.

Associated features. Common associated features include resentment and anger, which may lead to violence. Grandiosity and ideas or delusions of reference are common. Often there is social isolation, seclusiveness, or eccentricities of behavior. Suspiciousness, either generalized or focused on certain individuals, is common. Letter writing, complaining about various injustices, and instigation of legal action are frequent. These individuals rarely seek treatment, and often are brought for care by associates, relatives, or governmental agencies as a result of the individuals' angry or litigious activities.

Age at onset. Generally middle or late adult life.

Course. The course of Paranoia and Shared Paranoid Disorder is chronic with few, if any, exacerbations or periods of remission. The course of Acute Paranoid Disorder, by definition, is limited to six months' duration.

Impairment. Impairment in daily functioning is rare. Intellectual and occupational functioning are usually preserved, even when the disorder is chronic. Social and marital functioning, on the other hand, are often severely impaired.

Complications. None.

Predisposing factors. Immigration, emigration, deafness, and other severe

stresses may predispose to the development of a Paranoid Disorder. Individuals with Paranoid or Schizoid Personality Disorders may also have a greater likelihood of developing a Paranoid Disorder.

Prevalence. Paranoid Disorders are thought to be rare. However, Paranoia involving delusional jealousy may be more common.

Sex ratio and familial pattern. No information.

Differential diagnosis. In **Organic Delusional Syndromes**, particularly those induced by amphetamines, persecutory delusions are common.

In **Schizophrenia, Paranoid Type**, or **Schizophreniform Disorder**, there are certain symptoms, such as incoherence, marked loosening of associations, prominent hallucinations, and bizarre delusions (e.g., delusions of control, thought broadcasting, withdrawal, or insertion), that are not present in Paranoid Disorders. Although delusions that others are attempting to control the individual's behavior are common in both Paranoid and Schizophrenic Disorders, the experience of being controlled by alien forces suggests Schizophrenia or Schizophreniform Disorder. In addition, delusions in Schizophrenia are more likely to be fragmented and multiple rather than systematized, as in Paranoid Disorders.

In **Paranoid Personality Disorder** there may be paranoid ideation or pathological jealousy, but there are no delusions. Whenever an individual with a Paranoid Disorder has a preexisting Personality Disorder, including Paranoid Personality Disorder, the Personality Disorder should be listed on Axis II, followed by the phrase "Premorbid" in parentheses.

297.10 Paranoia

The essential feature is the insidious development of a Paranoid Disorder with a permanent and unshakable delusional system accompanied by preservation of clear and orderly thinking. Frequently the individual considers himself or herself endowed with unique and superior abilities. Chronic forms of "conjugal paranoia" and Involutional Paranoid State should be classified here.

Diagnostic criteria for Paranoia

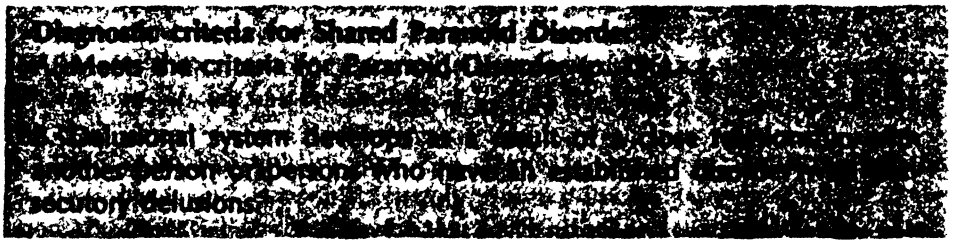
A. Meets the criteria for Paranoid Disorder (p. 196).

B. A chronic and stable persecutory delusional system of at least six months' duration.

C. Does not meet the criteria for Shared Paranoid Disorder.

297.30 Shared Paranoid Disorder

The essential feature is a persecutory delusional system that develops as a result of a close relationship with another person who already has a disorder with persecutory delusions. The delusions are at least partly shared. Usually, if the relationship with the other person is interrupted, the delusional beliefs will diminish or disappear. In the past this disorder has been termed Folie à deux, although in rare cases, more than two persons may be involved.



298.30 Acute Paranoid Disorder

The essential feature is a Paranoid Disorder of less than six months' duration. It is most commonly seen in individuals who have experienced drastic changes in their environment, such as immigrants, refugees, prisoners of war, inductees into military services, or people leaving home for the first time. The onset is usually relatively sudden and the condition rarely becomes chronic.